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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,080	07/24/2003	David C. Eby	29618/38939	9963
4743	7590	05/10/2006	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			DOOLEY, JAMES C	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/626,080	Applicant(s) EBY ET AL.	
	Examiner James C. Dooley	Art Unit 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24, 26, 27 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) 25 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-17, 21-24, 26-27, and 29-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This non-final Office Action is mailed in response to amendment filed 11/23/2005 wherein claims 1,4,22,24,26,27,29, and 30 were amended and claims 25 and 28 were cancelled.

### ***Election/Restrictions***

Applicant's election with traverse of the restriction requirement in the reply filed on 3/09/2006 is acknowledged. The traversal is on the ground(s) that the claimed inventions of claims 24, and 25, 27, and 30 do not show separate utility. This is found persuasive because the inventions are not seen as being distinct.

Claims 1-4, 22-23, 26, 31, and 32-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/09/2006.

Applicant has not elected as species of the invention as listed in the previous Office action mailed 2/07/2006. For the purpose of expediting the examination process claims 5-21, 24, 27 and 30 will be examined as requested by Applicant. However, claim 30 is directed towards a distinct species.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 6, 24, 27, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Harlingen (US 2,149,489). Harlingen discloses a file organizer having a plate (A), a plurality of vanes (prescriptions, pg. 2 ln. 82-84), and a band (E). The plate (A) is understood to have first side (bottom) and second side (top) with the vanes in between. Each vane is attached at one end to the sheet "C" which is attached to the plate "A" (pg. 2 lines 11-16). It is also within the purview of Harlingen that sheet "C" can be removed and the vanes be attached directly to the plate (pg. 2 lines 16-19). Figure 1 shows the band extending from the first to the second side. The band (E) is disclosed to be attached to the plate (pg. 2 lines 84-87), therefore a catch is inherent. For example the catch could be either a staple or adhesive.

With respect to claim 6, the vanes are disclosed as prescriptions. The prescriptions are disclosed as being made from paper (pg. 1 lines 10-16), and described later as being turned back (pg. 2 lines 84-91). Figure 1 shows the vanes in the turned back position, demonstrating their inherent flexibility.

With respect to claim 24, Harlingen discloses a file organizer having a plate (A), a vane (prescriptions, pg. 2 ln. 82-84), and a band (E). Figure 1 shows the band extending from the first to the second side. The band (E) is disclosed to be attached to the plate (pg. 2 lines 84-87), therefore a catch is inherent. For example the catch could be either a staple or adhesive.

With respect to claim 27, Harlingen discloses a file organizer having a plate having first (A) and second (B) ends, a plurality of vanes (prescriptions, pg. 2 ln. 82-84), and a band (E). Figure 1 shows the band extending from the first to the second side. The band (E) is disclosed to be attached to the plate (pg. 2 lines 84-87), therefore a catch is inherent. The file organizer of Harlingen is also seen as being adapted to be placed flat and carried vertically. A handle is inherent feature of the covers (A) and (B) as that is where the file organizer would be gripped.

With respect to claim 29, the band (E) is disclosed to be attached to the plate (pg. 2 lines 84-87), therefore a catch is inherent.

With respect to claim 30, the first (A) and second (B) sections are separated by a fold line so that the second portion may be folded over the first section (pg. 1 lines 77-83).

***Allowable Subject Matter***

Claims 7 –11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Harlingen does not show the band being received in an opening, and provides no motivation for having the band detachably connected to the plate.

Claims 12-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Harlingen shows the vanes being attached to the plate by means of adhesive, therefore providing no motivation to provide slots in the plate.

Claims 18-21 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1-24,26-27,29-32 have been considered but are moot in view of the new ground(s) of rejection. The previously indicated allowability of claims 5-21, and 24 is withdrawn in view of the newly discovered reference: Harlingen ('171).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ainsworth (US 2,149,489). Ainsworth discloses an organizer having plate (2), a plurality of vanes (photographs), an elastic band (16), and a catch on the plate (18).

Straus (US 2,087,786). Straus discloses a file organizer having a plate (10) with a first (rear cover, 15), and second (front cover, surface 12) end, and a fold line (17). The vanes (20) are attached at area 21a (pg. 2 lines 2-5), between the first end and the fold line.

Parker (US 682,266). Parker discloses a plurality of vanes (B-F) secured to a plate (A), and an elastic strap (2) disposable over the vanes.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James C. Dooley  
Examiner  
A.U. 3634

May 8, 2006

  
SARAH JURA  
PRIMARY EXAMINER